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Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Communication No. 8/2015

Views adopted by the Committee at its fifty-sixth session (21 September-9 October 2015)

Subject matter:	Supplementary social security benefits established in collective agreements
Substantive issues:	Right to the enjoyment of just and favourable conditions of work; right to social security
Procedural issues:	Submission of the communication within one year after the exhaustion of domestic remedies; Committee's competence *ratione temporis*; Committee's competence *ratione materiae*
Articles of the Covenant:	7 and 9
Articles of the Optional Protocol:	2 and 3, paras. 2 (a) and (b)

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Annex

Decision of the Committee on Economic, Social and Cultural Rights under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (fifty-sixth session)

concerning

Communication No. 8/2015

Submitted by:	L.A.M.C. (represented by counsel, Antonio Álvarez-Ossorio Gálvez)
Alleged victim:	The author
State party:	Spain
Date of communication:	14 April 2015 (date of dispatch by the State party's postal service)

The Committee on Economic, Social and Cultural Rights, established under Economic and Social Council resolution 1985/17 of 28 May 1985,

Meeting on 24 September 2015,

Having concluded its consideration of communication No. 8/2015, submitted to the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Mr. L.A.M.C., a Spanish national of legal age, born on 19 February 1952. He claims to be a victim of a violation by the State party of his rights under articles 7 and 9 of the International Covenant on Economic, Social and Cultural Rights.[1] In addition, he alleges that the State party also violated his rights under article 12, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights. The author is represented by counsel.

1.2 On 16 June 2015, the Working Group on Communications, acting on behalf of the Committee, decided that observations from the State party were not needed to ascertain the admissibility of the present communication. Therefore, this communication has not been transmitted to the State party in accordance with article 6, paragraph 1, of the Optional Protocol.

The facts as submitted by the author

2.1 The author worked for a banking firm ("the bank") from 1 June 1973 to 20 November 2002. When his employment relationship with the bank was terminated due to his dismissal, his professional category was grade 1 administrator.

[1] The Optional Protocol to the Covenant entered into force for the State party on 5 May 2013.

2.2 The XVIII Collective Agreement for the Banking Sector ("the Agreement") was published in the Official Gazette on 26 November 1999. Section VI of the Agreement regulated the supplementary allowances payable in the event of staff illness, total permanent disability, retirement or death, and the retirement pension for which members of the banking profession are eligible. In application of this section's provisions, an internal fund was established to cover the cost of these supplementary allowances.

2.3 On 15 November 2002, in accordance with Royal Decree No. 1588/1999, the bank took out insurance policies with an insurance company to cover the supplementary allowances payable to its active employees under the terms of the Agreement. The author was included among the policy beneficiaries subject to the terms agreed in the individual certificates of insurance.

2.4 The author alleges that he was dismissed by the bank on 20 November 2002. He subsequently asked the bank to release to him the actuarial reserve corresponding to the pension obligations accrued in his name.[2] However, the bank did not grant his request. Instead, it exercised the right of redemption established in clause 3 of the policy in respect of the actuarial reserve corresponding to the pension obligations it had assumed as policyholder.

2.5 On 3 October 2006, the author filed a lawsuit against the bank and the insurance company before Madrid Social Court No. 6 ("Court No. 6") and petitioned the Court to affirm his right to redeem the individual provision he had held in the fund until 15 November 2002, and thereafter in the insurance policy, amounting to €126,961.31.

2.6 On 15 December 2006, Court No. 6 dismissed the author's petition. The Court ruled that the Agreement gave employees the right to receive an allowance (supplementary benefits) once the event giving rise to this right had occurred; that there was no rule in the Agreement that established a right to redeem the corresponding amount in the event that a person's contract of employment was terminated prior to the event giving rise to the right to a benefit; and that, accordingly, until this event occurred, the employee had only an expectation of a right. The author filed an application for reversal before Madrid High Court.

2.7 On 29 June 2007, the High Court admitted the application and reversed the decision of Court No. 6, declaring the author's right of redemption to be established in the policy concluded between the bank and the insurance company and instructing the defendants to pay the author €127,768.21. The High Court ruled, inter alia, that the obligations and contingencies provided for in the Agreement, such as illness, disability and retirement, were not dependent on the discretion of the parties. By contrast, the termination of the employment relationship — and the basis of the Agreement — through an unfair dismissal was a unilateral decision taken by one of the contracting parties, that is, a discretionary act which should not have caused additional injury to the employee, who ceases to receive his or her salary; that although discretionary improvements to the social security system were discretionary at the time of their introduction, once established, they could be terminated or withdrawn except as provided for in the instrument creating them; and that the Agreement did not provide for the withdrawal of discretionary improvements in the event of early termination of an employment relationship. The bank and the insurance company subsequently appealed to the Supreme Court for the unification of case law.

2.8 On 21 September 2009, the Supreme Court overturned the ruling of Madrid High Court and confirmed the judgement issued by Court No. 6.

[2] According to the author, the value of the accounting reserve for potential pension obligations deriving from the Agreement which the bank had accrued in his name on the date his employment was terminated amounted to €127,768.21.

2.9 On 15 January 2010, the author filed an application for constitutional *amparo* before the Constitutional Court, alleging a violation of his right to effective legal protection under articles 14 and 24 of the Spanish Constitution. On 16 May 2010, the Constitutional Court dismissed the author's application for *amparo* on the grounds that he had not demonstrated the special constitutional significance of his case, as required pursuant to article 49.1 (b) of the Organic Act on the Constitutional Court.

2.10 On 17 November 2010, the author submitted an application to the European Court of Human Rights, citing a violation of his rights under article 6, paragraph 1, and article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 1 of the Additional Protocol to the Convention (Protocol No. 1). On 21 February 2013, the European Court of Human Rights dismissed his application on the grounds that it did not meet the admissibility criteria set forth in articles 34 and 35 of the European Convention on Human Rights.

2.11 On 11 July 2014, the author asked the European Court of Human Rights to give the reasons why his application had been declared inadmissible on 21 February 2013. The author states that he is submitting the present communication to the Committee in the absence of a response from the European Court of Human Rights and that the start date for calculation of the one-year time period established in article 3, paragraph 2 (a), of the Optional Protocol is 11 July 2014.

The complaint

3.1 The author maintains that the State party violated his rights under articles 7 and 9 of the International Covenant on Economic, Social and Cultural Rights. Additionally, he alleges that the State party also violated his rights under article 12, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights.

3.2 The author asks the Committee to find a violation of the aforementioned articles and to establish compensation for loss and damages and legal costs.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its provisional rules of procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (E/C.12/49/3), whether the case is admissible pursuant to the Optional Protocol.

4.2 The Committee is competent *ratione materiae* to examine claims of violation of any of the economic, social and cultural rights enshrined in the International Covenant on Economic, Social and Cultural Rights. The Committee therefore declares the author's claims under article 12, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights inadmissible under article 3, paragraph 2 (b), of the Optional Protocol.

4.3 The Committee recalls that the Optional Protocol entered into force for the State party on 5 May 2013 and that, in accordance with article 3, paragraph 2 (b), of the Optional Protocol, the Committee should declare a communication inadmissible if it concerns events that occurred prior to the entry into force of the Optional Protocol for the State party concerned, unless the events continued after that date. In the present case, the Committee observes that the events that are the subject of the communication, including all the judicial decisions on the matter issued by the Spanish authorities, occurred prior to 5 May 2013, the date of entry into force of the

Optional Protocol for Spain. The information contained in the communication does not show evidence of any events that continued subsequent to the entry into force of the Optional Protocol which could, in themselves, be considered to constitute a violation of the Covenant. Consequently, the Committee considers that it is precluded, ratione temporis, from examining the present communication and that the communication is inadmissible under article 3, paragraph 2 (b), of the Optional Protocol.

5. The Committee therefore decides:

(a) That the communication is inadmissible under article 3, paragraph 2 (b) and (d), of the Optional Protocol; and

(b) That this decision should be transmitted to the State party and to the authors.